

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**GREG WALKER**  
Claimant

**MERCY MEDICAL CENTER**  
Employer

**APPEAL 21A-UI-15379-DB-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 05/23/21**  
**Claimant: Appellant (1)**

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Iowa Code § 96.4(3) – Able to and Available for Work

**STATEMENT OF THE CASE:**

The claimant/appellant filed an appeal from the June 29, 2021 (reference 01) unemployment insurance decision that found claimant was not eligible for unemployment benefits effective May 23, 2021 as he was not able to and available for work. The parties were properly notified of the hearing. A telephone hearing was held on August 31, 2021. The claimant participated personally. The employer participated through witness Amanda Felton. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits records.

**ISSUE:**

Was the claimant able to and available for work effective May 23, 2021

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a custodian beginning on January 21, 2019. He filed an original claim for unemployment insurance benefits effective May 23, 2021. Prior to May 23, 2021, the claimant had injured his shoulder in his apartment at home. He sought medical attention and has been treating with a physical therapist. His last day physically worked on the job with this employer was on December 31, 2020. He did not work after that date due to the shoulder injury. Claimant continues to have issues with his shoulder, along with several other medical conditions and illnesses that have affected his ability to work. Claimant is not able to work at this time due to his various medical conditions.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes as follows:

Iowa Code § 96.4(3) provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in § 96.19, subsection 38, paragraph "b", subparagraph 1, or temporarily unemployed as defined in § 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of § 96.5, subsection 3 are waived if the individual is not disqualified for benefits under § 96.5, subsection 1, paragraph "h".

Iowa Admin. Code r. 871-24.22(1) provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(1) Able to work. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

b. Interpretation of ability to work. The law provides that an individual must be able to work to be eligible for benefits. This means that the individual must be physically able to work, not necessarily in the individual's customary occupation, but able to work in some reasonably suitable, comparable, gainful, full-time endeavor, other than self-employment, which is generally available in the labor market in which the individual resides.

Iowa Admin. Code r. 871-24.23(35) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(35) Where the claimant is not able to work and is under the care of a medical practitioner and has not been released as being able to work.

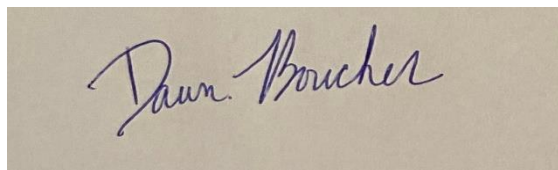
The burden is on the claimant to establish that he is able to work and available for work within the meaning of the statute. Iowa Code § 96.6(2); Iowa Admin. Code r. 871-24.22. To be able to work, "[a]n individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood." *Sierra v. Employment Appeal Board*, 508 N.W.2d 719, 721 (Iowa 1993); *Geiken v. Lutheran Home for the Aged*, 468 N.W.2d 223 (Iowa 1991); Iowa Admin. Code r. 871-24.22(1). "An evaluation of an individual's ability to work for the purposes of determining that individual's eligibility for unemployment benefits must necessarily take into consideration the economic and legal forces at work in the general labor market in which the individual resides." *Sierra* at 723. The court in *Gilmore v. Empl. Appeal Bd.*, 695 N.W.2d 44 (Iowa Ct. App. 2004) noted that "[i]nsofar as the Employment Security Law is not designed to provide health and

disability insurance, only those employees who experience illness-induced separations that can fairly be attributed to the employer are properly eligible for unemployment benefits." *White v. Emp't Appeal Bd.*, 487 N.W.2d 342, 345 (Iowa 1992) (citing *Butts v. Iowa Dep't of Job Serv.*, 328 N.W.2d 515, 517 (Iowa 1983)).

The claimant credibility testified that he is not able to work at this time due to his various medical conditions. As such, the claimant has failed to establish that he is able to and available for work for the purposes of unemployment insurance benefits. Regular unemployment insurance benefits funded by the State of Iowa are denied effective May 23, 2021 and continuing until the claimant establishes that he is able to and available for full-time work.

**DECISION:**

The June 29, 2021 (reference 01) unemployment insurance decision is affirmed. The claimant was not able to work or available for work effective May 23, 2021. Unemployment insurance benefits funded by the State of Iowa are denied effective May 23, 2021 and continuing until the claimant establishes that he is able to and available for full-time work.



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Dawn Boucher  
Administrative Law Judge

September 7, 2021  
Decision Dated and Mailed

db/mh